

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.08.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 1015 of 2007
and MP.No.1 of 2007

G. Vijayan

... Appellant
(2nd Respondent in
WP.NO.10200/98)
-vs-

1.The Presiding Officer
Labour Court
Salem.

2.Tamil Nadu State Transport Corporation
(Sales Division I) Ltd.,
(Formerly known as Anna Transport
Corporation Ltd.,)
No.12 Ramakrishna Road, Salem 636 007.

... Respondents
(1st Respondent and
Petitioner in do)

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated 13.07.2007 made in W.P.No.10200 of 1998.writ petition presented to this court under article 226 of the constitution of india praying for the issuance of a writ of certiorari calling for the records of the first respondent in its award made in I.D.NO.11 of 1997 dated 28.8.97 quast the same.

For appellant :: Mr. K.V. Shanmuganathan

JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

This writ appeal is directed against the order of the learned single Judge dated 13.07.2007 passed in W.P.No.10200 of 1998.

2. The appellant was working as a Conductor in the second respondent Transport Corporation and he was absent from duty during 25.10.1995 to 31.10.1995; 07.11.1995 to 09.11.1995; 12.11.1995 to 16.11.1995; and 19.11.1995 to 22.11.1995. Since he used to be frequently absent, the second respondent Transport Corporation has

decided to take disciplinary action and issued a charge memo on 28.11.1995. The explanation submitted by the appellant was not satisfactory, therefore, disciplinary proceedings was initiated, Enquiry Officer was appointed and at the conclusion of the domestic enquiry, report was submitted that the charges stand proved. The second respondent Transport Corporation has decided to impose major punishment, and therefore, second show cause notice was issued to the appellant on 07.04.1996, proposing dismissal from service. After receiving explanation from the appellant, which was found to be not satisfactory, the second respondent Transport Corporation has passed the order of dismissal on 25.07.1996. Aggrieved by the said dismissal order, the appellant has raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (in short, "I.D. Act") and was taken as I.D.No.11 of 1997. After considering the materials available on record, the Labour Court, by order dated 28.08.1997, held that the enquiry was conducted in a fair and proper manner and the charges levelled against the appellant were held to be proved. However, by invoking Section 11-A of the I.D. Act, the Labour Court has granted reinstatement with continuity of service, but without backwages. Aggrieved by the said award, the second respondent Transport Corporation has filed the writ petition.

3. It was the contention of the second respondent Transport Corporation before the learned single Judge that the appellant has absented himself for more than 27 occasions and in that regard 13 punishments were suffered by him. It is also the case of the second respondent Transport Corporation that pending the above writ petition, the appellant was reinstated into service on 13.05.2003, subject to the result of the writ petition and in normal course the appellant is to retire on 31.05.2014. The learned Judge on deciding as to whether the Labour Court has properly exercised its discretion under Section 11-A of the I.D. Act and having found that the appellant has absented himself from duty unauthorisedly on 27 occasions and has been awarded 13 punishments in the past and even thereafter, he has not chosen to refine himself and therefore his past records are bad and in view of the past conduct of the appellant, which the Labour Court has failed to take into consideration, has allowed the writ petition filed by the second respondent Transport Corporation, setting aside the award passed by the Labour Court in reinstating the appellant with continuity of service, but without backwages. The learned Judge has however stated that an amount of Rs.20,000/- received by the appellant from the Court deposit made by the second respondent Transport Corporation shall not be recovered, since the amount has already been withdrawn by the appellant. It is, as against the said order of the learned single Judge, the present writ appeal is filed by the second respondent in the writ petition, who was the employee of the Transport Corporation.

4. The contention raised by the learned counsel for the appellant is that the Labour Court has exercised its powers conferred under Section 11-A of the I.D. Act and therefore, it should not have been interfered.

5. The above said contention is not sustainable. In this case, the Labour Court having held that the enquiry conducted by the second

respondent Transport Corporation is fair and proper and charge levelled against the petitioner stood proved, ought not to have interfered with the punishment under Section 11-A of the I.D. Act. In this regard it is useful to refer Section 11-A of the I.D. Act, which reads as under:

" 11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

6. A reference to the award passed by the Labour Court shows that the Labour Court in clear terms has come to the conclusion that the domestic enquiry was conducted in a fair manner. Further, the previous records of the appellant is accumulated with many punishments for frequent unauthorised absence. In fact, the Labour Court has also stated that the Transport Corporation has awarded only lesser punishment for the misconduct of unauthorised absence committed during the period 1987 to 1995. Having held so, it has shown sympathy on the appellant on the ground that he was without employment nearly for one year from the date of his dismissal, viz., from 25.07.1996 and also lost salary for one year and considering the punishment of dismissal as harsh, has set aside the same and ordered reinstatement with service benefits, but without backwages. This is a classic instance wherein misplaced sympathy has been shown by the Labour court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy or generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgements of the Apex court. It is also clear that the Apex court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the Court can interfere to reduce the punishment, as it was held in B.S. Chaturvedi vs. Union of India (AIR 1996 SC 484) and Pritam Singh vs. Union of India (JT 2004 (7) 576).

7. On the factual situation in this case, as found by the Labour Court itself considering the conduct of the petitioner for frequently absenting himself, we are of the considered view that the punishment is not shocking to the conscience warranting interference in respect of the quantum of punishment.

8. While considering the scope of 107-A of Madhya Pradesh Industrial Relations Act, which is same as that of Section 11-A of I.D. Act, the Supreme Court has laid down the law that the jurisdiction vested with the Labour Court to interfere with the punishment cannot be exercised capriciously or arbitrarily and merely on the compassionate ground no interference can be made with the punishment awarded by the employer especially when the charge against the workman has been proved. That was the case in M.P. Electricity Board vs. Jagdish Chandra Sharma (2005) (3) SCC 401.

" 8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P. SRTC v. Subhash Chandra Sharma (2000) 3 SCC 324) this Court, after referring to the scope of interference with punishment under Section 11-A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh (2004) 8 SCC 200) this Court after referring to the decision in State of Rajasthan v. B.K. Meena (1996) 6 SCC 417) also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate (2005) 2 SCC 489) this Court again

reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in Mahindra and Mahindra Ltd. v. N.B. Narawade (2005) 3 SCC 134). This Court summed up the position thus: (SCC p. 141, para 20)

" 20 . It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgements of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

It may also be noticed that in Orissa Cement Ltd. v. Adikanda Sahu (1960) 1 LLJ 518 (SC) and in New Shorrock Mills v. Maheshbhai T. Rao (1996) 6 SCC 590) this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more

justifiable. Recently, in Muriadih Colliery BCC Ltd. v. Bihar Colliery Kamgar Union (2005) 3 SCC 331) this Court after referring to and quoting the relevant passages from Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh 2 and Tournamulla Estate v. Workmen (1973) 2 SCC 502) held: (SCC p. 336, para 17)

"The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal."

9. In Anand Regional Co-operative Oil Seeds Growers Union Ltd., vs. Shailesh Kumar Harshadbhai Shah 2006 (6) SCC 548, the Supreme Court has again reiterated about the limited jurisdiction of industrial Courts to interfere with the quantum of punishment as follows:

"25. It is now well settled that the industrial courts do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. (See North Eastern Karnataka RT Corpn. v. Ashappa (2006 (5) SCC 137), State of U.P. v. Sheo Shanker Lal Srivastava (2006 (3) SCC 276), A. Sudhakar v. Postmaster General (2006 (4) SCC 348), Mahindra and Mahindra Ltd. v. N.B. Narawade (2005 (3) SCC 134), M.P. Electricity Board v. Jagdish Chandra Sharma (2005 (3) SCC 401), Hombe Gowda Educational Trust v. State of Karnataka (2006 91) SCC 430), and Bharat Petroleum Corpn. Ltd. v. T.K. Raju (2006 (3) SCC 143). "

The said view of the Supreme Court, which is consistent was also affirmed in Karnataka Bank Ltd. v. A.L. Mohan Rao (2006 (1) SCC 63), the relevant portion reads as under:

" 6. In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment."

10. It is also relevant to point out that the Supreme Court in a recent case reported in State of Rajasthan and another vs. Mohd. Ayub Naz (2006 (1) SCC 589) held that, an employee who was absented himself

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for a prolonged period without prior permission, the decision of the employer to dismiss him on disciplinary enquiry cannot be interfered. Further, the Supreme Court has observed,

"9. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. "

Therefore, by applying the said consistent judicial pronouncements of the Apex Court, we have no hesitation to come to the conclusion that the award of the Labour Court in ordering reinstatement of the appellant with service benefits, however, without backwages is not on proper and sound reasoning as found by the learned single Judge. In view of the same, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer
Labour Court
Salem.

+ 1 cc to Mr.K.V.Shanmuganathan Advocate SR.NO.49155

JRG(CO)
RD 20.8.07

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